HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.1783 of 2000

Dated 20th day of June, 2007

Between:

M/s.Biological (E) Ltd., rep. by its
Director (Finance), G.V.Rao, Azamabad,
Hyderabad ..
Petitioner

And

The Govt. of India, rep. by Secretary,
Finance Department, New Delhi
and two others ..
Respondents

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O R D E R:

This writ petition is filed seeking a direction to the respondents 1 and 2 not to encash/revoke Bank Guarantees Nos.08422 and 08423 dated 26.2.1999 which were furnished by the petitioner to ensure re-export of the consignment in terms of custom Notification dated 14.11.1995.

The brief facts of the case are that the petitioner-company is a manufacturer of medicines and pharmaceuticals. It exported pharmaceutical formulations namely Isoniazide of 2000 kgs. to M/s.Marshing and Company Ltd. Denmak and Ethambutol HCL to M/s.Kimia Pharma P.T., Indonasia and these two consignments of exports were under the advance licenses issued by the Government of India, but the consignees rejected the material on certain ground. The petitioner after reprocessing the rejected material, re-exported it to the consignees. within the stipulated time of six months, and executed two bank guarantees on 26.2.1999 drawn on the 3rd respondent-bank towards the customs duty which is evident from the certificate dated 4.1.2000 issued by the Superintendent of Central excise. The bank guarantees are valid up to 11.8.2000. Now, the petitioner's grievance is that the 2nd respondent-Deputy Commissioner of Customs, vide letter dated 24.12.1999, required the petitioner to pay customs duty on the ground that it did not re-export the goods within the stipulated time and the 2nd respondent is also trying to encash or revoke the bank guarantees furnished by the petitioner.

In spite of the fact that notices were served on the respondents,

they have not chosen to file their counter affidavit.

The main contention of the learned counsel for the petitioner is that the purpose of furnishing bank guarantees is only to ensure that the commodity, after reprocessing, was re-exported to the very same consignees and in the event of the commodity being re-exported to some other consignee the petitioner would be entitled to pay customs duty. As the two consignments, after reprocessing, were re-exported only to the original consignees and to that effect a certificate dated 4.1.2000, was also issued by the Superintendent of Central Excise, the respondents are duty bound to return the bank guarantees furnished by the petitioner-company. But, the respondents are trying to revoke/encash the bank guarantees as if the petitioner had contravened the Custom Notification dated 14.11.1995.

The learned standing counsel for Central Government has submitted that according to the Custom Notification dated 14.11.1995 the reprocessing, etc. shall be done within a period of six months and inasmuch as the same was not done within the stipulated time and the material was re-exported beyond the stipulated period of time, it only prompted the respondents 1 and 2 to revoke the bank guarantees.

On perusing the entire record coupled with the Certificate issued by the Superintendent of Central Excise dated 4.1.2000, this Court is of the view that it is not necessary for this Court to go into the aspect as to whether the reprocessing, etc. was done in terms of the Custom Notification dated 14.11.1995, but it is for the authorities to decide that aspect of the matter. However, as the petitioner-company gave two representations dated 25.1.2000 and 31.1.2000 and has narrated the facts in detail, this Court deems it appropriate to direct the respondents to consider the petitioner's representations and pass appropriate orders indicating whether the bank guarantees are to be returned to the petitioner or to be encashed. Till such an exercise is

completed, the interim stay granted by this Court on 7.2.2000 shall hold good.

In the result, the writ petition is disposed of in terms of the above direction. No costs.

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20.06.2007

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